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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/568,758	02/21/2006	Shingo Sugahara	Q93312	6666

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EXAMINER	
BELLINGER, JASON R	

ART UNIT	PAPER NUMBER
3617	

MAIL DATE	DELIVERY MODE
01/09/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	**Application No.** 10/568,758	**Applicant(s)** SUGAHARA, SHINGO	
	Examiner Jason R. Bellinger	**Art Unit** 3617	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 10 December 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☒ The period for reply expires *3* months from the mailing date of the final rejection.
   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: _____.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Jason R Bellinger/
Primary Examiner
Art Unit: 3617

Continuation of 11. does NOT place the application in condition for allowance because: Applicant argues that Figures 1-2 do not qualify as "prior art" and thus do not require a "Prior Art" label. However, regarding the drawing figures of an application, the "Prior Art" label only means that the drawings shown are the state of the conventional art, i.e. what is known, and does not result in any admittance of these drawings qualifying as prior art under 35 USC 102 or 103. Furthermore, Figures 1-2 are clearly described in the specification as being conceptual of the present state of the art. Since these figures lack any structure of the claimed invention, they are considered to be "prior art". i.e. common knowledge in the art. Therefore, these figures require a "Prior Art" label and not a "Related Art" label as set forth in section 2 of the prevoius office action.

Applicant argues that the JP 56-95983 reference lacks an adjustment mechanism located at the idler wheel and wheel. However, it should be noted that Satzler was used to teach this limitation.

The Applicant then argues that both references lack the "adjustment mechanism" as set forth in the claims. It should be noted that the claims lack any physical structure for the "adjustment mechanism", and thus do not preclude the adjustment mechanisms taught by the JP 56-95983 and Satzler references.

Applicant argues that the wheels of the JP 56-95983 reference "respond to the crawler, instead of 'orienting the direction of the rubber track'." However, the wheels of the foreign reference still function to "orient the direction of the track" by preventing the track from moving beyond the physical plane formed by the wheels (i.e. the wheels prevent the track from coming off the wheels, and thus orient the direction of the track).

Applicant argues that Satzler does not teach the adjusmtent mechanism being located at a wheel located between the idler and drive wheels. However, the foreign reference (JP 56-95983) already teaches this limitation. Satzler was instead used to teach an adjustment mechanism located at the idler wheel.

Applicant again argues that the Examiner did not provide adequate rationale for combining the references. Applicant supports this argument by stating that the references lacked any suggestions that track alignment problems needed to be solved. However, the KSR decision precludes the need for references to explicitly provide modification rationale. Furthermore, rational was provided in the rejection, which would have resulted in predictable results for one of ordinary skill in the art.

Applicant argues that the Examiner used hindsight to combine the references. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).